



U.S. Citizenship
and Immigration
Services

FILE:

Office: VERMONT SERVICE CENTER

Date: OCT 13 2004

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

Some documents refer to the Abbey of the Holy Name in West Milford, New Jersey, as the petitioner, but the Form I-360 petition was signed not by any abbey representative, but by the alien beneficiary. Thus, the alien, and not the abbey, has assumed legal responsibility for the accuracy of the claims set forth in the petition.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a Ukrainian Orthodox priest. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States--
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
 - (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 26, 2002. Therefore, the petitioner must establish that he was continuously performing the duties of a priest throughout the two years immediately prior to that date.

Part 4 of the Form I-360 petition asks whether the alien has worked in the United States without permission. In response, an unidentified person has written "no, except person has received love offerings in return for doing landscaping."

[redacted] of the Holy Synod of Western Europe and the Americas, Ukrainian Orthodox Church, discusses the petitioner's past experience:

[The petitioner] assumed the duties of Pastor for the Mission of our Archdiocese, St. Peter's Western Rite Orthodox Mission, in Baltimore for the past two years. . . . As part of his parish's functions, [the petitioner] also ministers at Overlea Nursing Home. . . . [t]he Church would provide for [the petitioner's] upkeep and maintenance in this position as a Priest if he can be allowed to maintain this assignment.

The archbishop's letter is the only document submitted with the initial filing of the petition. The director requested additional evidence to establish the petitioner's past experience, and to meet numerous other documentary requirements.

Among the documents submitted in response to this notice is a certificate from the Holy Synod of the Original Greek Orthodox Church, indicating that the petitioner "was ordained in the rank of Deacon on August 30, 1999 at the Holy Church of the Assumption of Virgin Mary at Asporpyrgos, and in the rank of Priest on August 31, 1999, at the Holy Church of Agia Zoni in Athens." This document places the petitioner in Greece in August 1999, which contradicts the earlier claim that the petitioner has been in the United States since December 1998. Computerized records indicate that the petitioner entered the United States on January 8, 1999; September 25, 1999; and January 12, 2000, on flights originating from London (where his spouse resides).

We note that the beneficiary was ordained in the *Greek* Orthodox Church, whereas his current and intended future work takes place at a *Ukrainian* Orthodox Church. The petitioner has not shown that these two entities are the same denomination, or that the Ukrainian Orthodox Church recognizes the petitioner's Greek Orthodox ordination.

Regarding the petitioner's financial support, Archbishop John LoBue states "[o]ur church is not required to pay [the petitioner]. He is and has been self-supporting. He not only receives a pension from previous employment of approximately \$425 per month, but he also receives rental income from property . . . to which he has title in his name. In addition, [the petitioner] will receive a pension from Great Britain in the approximate amount of \$1,100 per month beginning in December 2003." The archbishop adds that the petitioner "has not held any job during the period from November 2000 until the present. Occasionally, he has engaged in his favorite pastime of landscaping and cutting lawns receiving love offerings for his services." At the time of filing, the petitioner was 63 years old, consistent with his claimed receipt of pensions from two different sources.

The director had also requested copies of the petitioner's income tax returns. In response, Archbishop LoBue states that this request is "not applicable." He does not explain why this request is not applicable, given that the petitioner admits to receiving income from several sources while residing in the United States. The tax exemption enjoyed by churches does not extend to individual workers at those churches.

The director denied the petition, concluding from the available evidence "that the beneficiary is semi-retired, that he does some part-time work as a priest, and that he has a part-time secular job as a landscaper." Therefore, the director determined that the petitioner had "not established that the beneficiary has worked solely as a full-time priest" during the qualifying period.

On appeal, counsel states that the petitioner seeks to engage in a "vocation (not a job)" (counsel's emphasis). Counsel states, but offers no evidence to prove, that the petitioner "has served full-time . . . since September 1, 1999 through this date, October 27, 2003." The petitioner himself states, in an affidavit, that he has worked "on a full-time basis from October 1, 2000 until the present," working 65 hours per week. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner asserts that he has not "ever had a part-time secular job as a landscaper. Landscaping has and always will be a hobby with me. . . . I have only received love offerings for this work." Performing landscaping in exchange for money is, for all intents and purposes, employment as a landscaper. Calling the monetary compensation a "love offering" instead of a "salary" or "wage" does not change this basic fact. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). If the petitioner has been paid for landscaping work, as he asserts, then he has not *continuously* carried on the vocation of a minister.

The record does not show that, during the qualifying period, the petitioner has continuously worked and supported himself solely as a minister. The minimal documentation of record is sufficient to show that the petitioner is, in fact, a priest, but it establishes little beyond that. The record contains no actual documentation of the petitioner's income from any source; the claimed sources (including landscaping, land rental, and pensions from unspecified past jobs) indicate that the beneficiary has supported himself through means unrelated to his current ministerial work.

Therefore, we affirm the director's decision that the petitioner has failed to establish that he continuously (i.e., full-time and without interruption) carried on the vocation of a minister throughout the two-year qualifying period.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.